

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
STEVEN R. KINCAID,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION,

Defendant.  
\_\_\_\_\_

)  
)  
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)  
) Civil Action No. 05-11522-WGY  
)  
)  
)  
)  
)

**AFFIDAVIT OF MARK A. POGUE**

Now comes Mark A. Pogue, who deposes and swears as follows:

1. My name is Mark A. Pogue. I am an attorney with the law firm of Edwards Angell Palmer & Dodge, LLP and I am counsel for Bank of America Corporation, the defendant in this matter.

2. Attached hereto in connection with defendant's Reply To Plaintiff's Opposition To Defendant's Motion for Summary Judgment are the following exhibits:

Exhibit A: Excerpts from the deposition of Alex Kotopoulos

Signed under the penalties of perjury this 9<sup>th</sup> day of December 2005.

/s/ Mark A. Poque

Mark A. Pogue (BBO# 550807)

EDWARDS ANGELL PALMER & DODGE, LLP

2800 Financial Plaza

Providence, RI 02903

Tel. 401-274-9200

Telecopy 401-276-6611

Sworn to before me this \_\_\_\_ day of December, 2005.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## DEPOSITION OF ALEC KOTAPOULOS

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

STEVEN R. KINCAID,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION,

Defendant.

CIVIL ACTION NO.  
04-11522-WGYDEPOSITION  
OF  
ALEC KOTAPOULOSAt Charlotte, North Carolina  
June 2, 2005Reporter: Christine A. Taylor  
Notary Public

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## APPEARING

For the Plaintiff: DAVID J. FINE, ESQ.  
Law Offices of David J. Fine  
Suits and  
Three Center Plaza  
Boston, Massachusetts 02103For the Defendant: RICHARD P. KANE, ESQ.  
Kane Woods, LLP  
Suits and  
100 North Tryon Street  
Charlotte, North Carolina 28202

Also Present: Steven Kincaid

\*\*\*\*\*

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Examination By Mr. Fine

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## EXHIBITS

(No exhibits were marked.)

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1 This is the deposition of ALEC KOTAPOULOS, taken  
2 in accordance with the Federal Rules of Civil Procedure  
3 in connection with the above case.

4 Pursuant to Notice, this deposition is being taken  
5 in the Law Offices of Hamilton, Fay, Moon, Stephen,  
6 Steele & Martin, 2825 Charlotte Plaza, 281 South College  
7 Street, Charlotte, North Carolina, beginning at 9:00 a.m.  
8 on June 2, 2005, before CHRISTINE A. TAYLOR, Notary  
9 Public.

10  
11 ALEC KOTAPOULOS, upon first being duly  
12 sworn, testified as follows:

## EXAMINATION BY MR. FINE

13 Q. Please state your full name.  
14 A. Alec Kotopoulos.  
15 Q. Could you spell the last name?  
16 A. K-o-t-o-p-o-u-l-o-s.  
17 Q. Where do you reside?  
18 A. In Charlotte, North Carolina.  
19 Q. How are you employed?  
20 A. I'm not.  
21 Q. When is the last time you were employed?  
22 A. With Bank of America. So that would have  
23 been 2004.  
24  
25

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1 Q. When did you leave the bank in 2004?  
2 A. February.  
3 Q. What were the circumstances of your leaving?  
4 A. Merger.  
5 Q. Who merged with whom?  
6 A. Fleet and Bank of America. Bank of America  
7 bought Fleet.  
8 Q. And at the time of the merger various people  
9 at Bank of America were let go?  
10 A. That's my understanding.  
11 Q. Did you receive a severance package?  
12 A. I received a package. I was offered a  
13 package and accepted the package.  
14 Q. What were the terms of the package?  
15 A. That's private between the bank and I.  
16 Q. Well --  
17 A. There were monetary. If that's what you're  
18 asking.  
19 Q. Well, you're being called to testify as a  
20 witness in this case and the financial terms would be  
21 potentially relevant to your bias in the case, so I  
22 think that it is a fair subject of examination.  
23 MR. KANE: Bias to?  
24 MR. FINE: How he feels about the bank. If  
25 he got a good severance package, he might be more

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## DEPOSITION OF ALEX KOTPOULOS

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- 1 A. Oh, yes.  
 2 Q. It was something that was discussed?  
 3 A. Yes.  
 4 Q. Okay. What did you say on that subject and  
 5 what did Ms. Burroughs say on that subject?  
 6 A. I don't know. I don't remember the  
 7 specifics.  
 8 Q. Did both of you recognize the possibility  
 9 that Mr. Kincaid could turn things around so that it  
 10 would not be necessary to terminate?  
 11 A. The best of my knowledge, yes.  
 12 Q. And did you discuss any ideas with  
 13 Ms. Burroughs about how to coach or counsel  
 14 Mr. Kincaid so that it would not be necessary to  
 15 terminate him?  
 16 A. To the best of my knowledge, yes.  
 17 Q. Do you remember any of the ideas that you or  
 18 Ms. Burroughs discussed on that subject?  
 19 A. No, No.  
 20 Q. Did you discuss with Ms. Burroughs how long a  
 21 period of time Mr. Kincaid should be given to see  
 22 whether he could turn things around such that it would  
 23 not be necessary to terminate him?  
 24 A. No.  
 25 Q. You didn't discuss that?

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- 1 A. No.  
 2 Q. Was the time that Mr. Kincaid was going to be  
 3 given left open and indefinite?  
 4 A. No, because that's an advice and counsel  
 5 issue.  
 6 Q. What do you mean by that?  
 7 A. Again, that 60 or -- I forget whether it was  
 8 60- or 90-day period.  
 9 Q. In other words -- are you saying that you had  
 10 no discretion about how long Mr. Kincaid was going to  
 11 be given to try to turn things around?  
 12 A. Oh, sure, I had discretion, yes.  
 13 Q. So who made the decision about how long he  
 14 was going to be given to try to turn things around?  
 15 A. Sheila and I jointly.  
 16 Q. Okay. And what did you decide?  
 17 A. We decided that we had heard a lot of bad  
 18 stuff from clients, we had decided that we had  
 19 internal feedback from Pierce and direct reports of  
 20 mine that was not positive with respect to the work he  
 21 was working on, and we had a situation here where we  
 22 felt Steve had been given a fair amount of time to  
 23 prove himself, so now it's time to give him a chance  
 24 through the probationary period to work through this  
 25 process. Either it was going to work or it wasn't

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- 1 going to work.  
 2 Q. Mr. Kotopoulos, do you remember the question  
 3 that I asked you?  
 4 A. Yeah, the period of time.  
 5 Q. That you and Ms. Burroughs decided you were  
 6 going to give Mr. Kincaid to try to turn things  
 7 around?  
 8 A. Right.  
 9 Q. What did you decide?  
 10 A. Just like with everybody else, the 90-day  
 11 period.  
 12 Q. Okay. And did you and Ms. Burroughs discuss  
 13 the fact that Ms. Burroughs should say to Mr. Kincaid  
 14 you are going to be given 90 days to try to turn  
 15 things around?  
 16 A. Ask the question again please.  
 17 Q. Did you discuss with Ms. Burroughs that she  
 18 should say to Mr. Kincaid that he was going to be  
 19 given 90 days to try to turn things around?  
 20 A. I instructed Sheila to talk to advice and  
 21 counsel just like I did with everybody else.  
 22 Q. So is your response to my answer no?  
 23 A. No. The answer is no.  
 24 Q. So you didn't say to Sheila Burroughs tell  
 25 Mr. Kincaid he's got 90 days to try to turn things

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- 1 around?  
 2 A. I don't recall that.  
 3 Q. Okay. You do recall that you decided that he  
 4 would be given 90 days to turn things around?  
 5 A. Yes.  
 6 Q. That you decided?  
 7 A. Yes. Absolutely.  
 8 Q. But you decided -- not -- or you didn't say  
 9 to Ms. Burroughs that you should tell Mr. Kincaid that  
 10 he's being given 90 days, right?  
 11 A. Again, I don't remember these things. I  
 12 don't remember. That's the answer.  
 13 Q. Okay. So you might have told her to tell  
 14 Mr. Kincaid he's got 90 days?  
 15 A. Possibly.  
 16 Q. Okay. And you remember that you told  
 17 Ms. Burroughs to talk to advice and counsel?  
 18 A. Absolutely.  
 19 Q. And did Ms. Burroughs report back to you at  
 20 some point that she had spoken to advice and counsel  
 21 regarding Mr. Kincaid?  
 22 A. Yes.  
 23 Q. And what did she say?  
 24 A. She said we need to set up an action plan.  
 25 Q. And what did you understand action plan to

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